CF0000057521

(02)

Cr. M. 1100 / 93

(Jail)
-2000 6-88

High Court of JABALPUR

APPEAL OF PRISONER

Registration No. 4361

7922 Name [illegible] Division Criminal

Name मंगेला सतनामी ग्राम - साकरा थाना - बेरला
जिला दुर्ग (मध्य प्र)

Age 27 वर्ष

Sentenced आजीवन कारावास on 9-7-1993

Under section 302 I.P.C. by न्यायालय श्री अजीत कुमार तृतीय अतिरिक्त सत्र न्यायाधीश दुर्ग, जिला दुर्ग (मध्य प्र)
सत्र प्रकरण क्रमांक 304/92

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 9-7-1993

2 Date of which copy received 14-7-1993

3 Date on which Appeal sent 14-7-1993

4 whether the prisoner wishes to be represented or not – Yes / ~~No~~.

No. 7922 Name जगेला उर्फ मंगेला सतनामी

Continued in CENTRAL Jail RAIPUR (M. P.)

No. 448/Cr.Appl 93 Dated 16-3-1993

Forward to the CHIEF JUDICIAL MAGISTRATE अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर
to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

Superintendent
अधीक्षक
Jail
केन्द्रीय जेल, रायपुर (म. प्र.)

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appeliate court

No Dated 198

Forwarded to the

C. J. Magistrate

Date of receipt in Appeliate Court Dated

(P. T. O.)

XI-HC-22

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri. A. No. 1100/93

मामला क्रमांक ..... **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

29-11-2005

Mr. Ashok Verma, counsel for the appellant.
Mr. G.K.Beriwal, Deputy Advocate General, Mr. Ashish Shukla, Additional Public Prosecutor and Mr. Ravindra Agrawal, Panel Lawyer for the respondent/State.

ORAL JUDGMENT

1. By this appeal, through Superintendent, Central Jail, Raipur, the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 9-7-1993 passed by IIIrd Additional Sessions Judge, Durg in Sessions Trial No.304/92, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

2. The prosecution case, in brief, is that, in the night of 11-6-1992, the deceased Rambai, who was the mother of the

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मामला क्रमांक —2— **सन् 200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant and her sister Surajbai were sleeping on separate cots in front of their house after taking dinner. In the midnight, the accused/appellant came and attacked her mother on her head with a lathi. Hearing the noise, Surajbai woke-up, saw the accused/appellant was attacking his mother and thereafter leaving the scene of occurrence. Surajbai called Manrakhan and others and apprised them about the incident. The villagers were also collected at the scene of occurrence. Rambai succumbed to the injuries. At about 3.00 A.M., Rekhmal reported the matter in the Police Station Berla, where Sub-Inspector S.K.A.Naqavi, P.W.-11 registered the F.I.R., Ex.P-6. After registering the case, he went to Village Sankara, the place of incident and prepared panchanama of the dead body of Rambai under Ex.P-9 and sent the dead body for post mortem examination to the Government Hospital, Durg. He also took into possession the blood stained soil and the plain soil from the place of occurrence under Ex.P-1, and a pair of chappal, a bamboo club, a piece of wood, towel, saree and wooden cot under Ex.P-2. While the accused/appellant was in the

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Police custody, he gave the memorandum Ex.P-3, and the lathi was recovered at the instance of the accused/appellant which was lying beneath the culvert. The seizure memo Ex.P-4 of the lathi was prepared. The lathi was stained with blood. The Investigating Officer also took into possession the blood stained lungi and half shirt of the accused/appellant under Ex.P-5. He also took into possession the clothes of the deceased under Ex.P-11. The site plan of the scene of occurrence was got prepared by the Patwari under Ex.P-13. After completion of the investigation, the charge-sheet was filed against the accused/appellant in the Court of Additional Chief Judicial Magistrate, Bemetara, who, in turn, committed the case to the Sessions Court, Durg, wherefrom IIIrd Additional Sessions Judge received the case for trial.

3. The prosecution, in order to prove the charges against the accused/appellant, examined 12 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which he has stated that, he has been

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

falsely implicated in the crime on account of the animosity and he is innocent. Learned Additional Sessions Judge, after hearing the argument of learned Public Prosecutor and learned counsel for the accused/appellant, convicted and sentenced the accused/appellant as mentioned in the earlier part of the judgment.

4. Coming to the question of death of Rambai, homicidal in nature, learned counsel for the accused/appellant did not dispute this fact. P.W.-12, Dr. V.S.Baghel, who conducted the post mortem on the body of Rambai, has stated that, on 11-6-1992, he was posted as Assistant Surgeon at District Hospital, Durg and on that date he had conducted the post mortem on the body of Rambai and he had noticed as many as 8 injuries. There was lacerated wound in frontal region of the head in the size of 3 x 1 inches deep upto bone, the bone was depressed. Another lacerated wound was in the front side of the head in the size of 1½ x 1 inches deep upto bone, the bone was depressed. Lacerated wound

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मामला क्रमांक Cri.A.No.1100/93 —5— सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was below the injury No.2 in the size of 1 x 1 inches deep upto bone. There was bruise on the right side of the head in the size of 6 x 1½ inches. Blood had oozed out of both the ears and dried. A clotted blood was present in the parietal region of the head and there was a fracture from right eye extending upto rear part of the skull. The muscle of the right temporal region was ruptured. There was fracture inside the skull also. The right mandible-bone was also fractured. P.W.-12, Dr.V.S.Baghel prepared the report Ex.P-17A. He opined that the injuries, which were found on the body of the deceased Rambai, could be caused by the lathi which was recovered by the Police. Rambai died on account of the head injuries. Therefore, in view of the above medical evidence, it is established that, the death of Rambai was homicidal in nature.

5. As far as the involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant submitted that, the whole case rests on the evidence of so called eye-witness namely Surajbai, P.W.-5, who has

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मामला क्रमांक — 6 — **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stated that, she was sleeping by the side of Rambai. Learned counsel for the accused/appellant further submitted that, para 8 of the evidence of this witness shows that, she had woken up only after the accused/appellant left the scene of occurrence after assaulting and as per the evidence of this witness, she saw the accused/appellant from back, therefore, being night, it was not possible for this witness to identify the person who assaulted Rambai. Learned counsel further developed his argument that, only on account of some quarrel took place between the deceased and the accused/appellant, the accused/appellant has been implicated in the crime. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence of P.W.-5, Surajbai, who has stated that, in the fateful night, after taking the dinner, the deceased and this witness, being sisters, were sleeping on separate cots side by side. At about 12 O'clock in the midnight, she woke-up after hearing the cries of Rambai and she saw that the accused/appellant Gangadhar was attacking Rambai with a lathi and thereafter the

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant ran away. She called Rekhmal and apprised him about the incident. There was injury on the head of Rambai, as a result of which, she died. Along with Rekhmal, Manrakhan and Jivrakhan also arrived at the scene of occurrence. They were also apprised about the incident. She has further stated that, she had come to stay with Rambai 15 days' back. One day prior to the incident, Rambai had scolded the accused/appellant that as to why he has donated the calf. On this, the accused/appellant had replied that, since the calf was of his father, therefore, he has donated it, and in the same night the accused/appellant assaulted Rambai. P.W.-6, Jivrakhan has stated that, in the night, he heard the cries of Surajbai saying that the accused/appellant has killed Rambai. Upon hearing this, he went to the house of Rambai, there Surajbai, P.W.-5 informed him that the accused/appellant has ran away after assaulting Rambai with a lathi. Similar is the evidence of P.W.-4, Manrakhan, who has stated that, Rekhmal called him, on which he went towards Rambai, where Surajbai, the sister of Rambai was sleeping and she informed him that the

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant has ran away after attacking Rambai and he saw that there was injury on the head of Rambai and blood was oozing out of it, on which, they called Kotwar Agardas, Ferudas and Patel Balmukund. P.W.-2, Rekhmal has corroborated the evidence of P.W.-5, Surajbai and has stated that, Surajbai called him and informed him that the accused/appellant has assaulted Rambai and he saw that Rambai was lying on the cot in unconscious condition. There was injury on the head and near that cot, Surajbai's cot was lying. Therefore, a close scrutiny of the evidence of P.W.-2, Rekhmal, P.W.-4, Manrakhan, P.W.-5, Surajbai and P.W.-6, Jivrakhan reveals that, Surajbai, P.W.-5 was present at the scene of occurrence, and on her cries, Rekhmal, P.W.-2 and these other two witnesses reached on the spot, where they saw Rambai in an injured condition and Surajbai, P.W.-5 disclosed to them that the accused/appellant Gangadhar has ran away after attacking Rambai with a lathi on her head and these witnesses saw the injury on the head of Rambai. The evidence of these witnesses shows that Surajbai, P.W.-5 immediately disclosed the

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मामला क्रमांक ...-9-... सन् **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

name of the accused/appellant that he has assaulted Rambai. Had Surajbai not seen the accused/appellant Gangadhar attacking Rambai, then there was no occasion for Surajbai to immediately disclose the name of the accused/appellant Gangadhar as the author of the injury. In the examination-in-chief, Surajbai, P.W.-5 has categorically stated that, she saw the accused/appellant Gangadhar assaulting Rambai and that injury stands corroborated by the medical evidence as well as the evidence of other witnesses, who had reached on the scene of occurrence. Therefore, we do not find any substance in the argument advanced by learned counsel for the accused/appellant that, in view of the evidence of Surajbai, P.W.-5, there was no occasion to identify Gangadhar. In this connection, if we look at the conduct of the accused/appellant Gangadhar, there was a reason to attack Rambai by him that on the previous day, a quarrel took place between Rambai and Gangadhar on the ground that Gangadhar had donated the calf of a cow in Bhagwat which was not liked by Rambai and she had scolded the accused/appellant and on this he had caught and

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मामला क्रमांक —10— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pressed the neck of Rambai which was witnessed by Surajbai, P.W.-5. The conduct of the accused/appellant Gangadhar after the incident also supports the evidence of Surajbai, P.W.-5 that even after commission of such a heinous crime why Gangadhar did not come to the house of the deceased. Had anybody else assaulted Rambai other than Gangadhar, then he ought to have come to the scene of occurrence being son of Rambai as he was present in the village.

6. Therefore, in view of the above discussion, we are of the considered opinion that, the involvement of the accused/appellant in committing the murder of his mother Rambai is established beyond reasonable doubt and the finding of the trial Court to that extent is based on the clinching and legal evidence, therefore, the same does not require any interference by this Court.

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आदेश पत्रक

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मामला क्रमांक —II— **/सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7. In the result, we do not find any substance in this appeal being devoid of merit, therefore, the appeal is dismissed. **Sd/-** **L.C.BHADOO** **Judge** **Sd/-** **V.K. Shrivastava** **Judge**	